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of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(d) *Processing of administrative appeals.* Appeals will be stamped with the date of their receipt by the FOIA response office, and will be processed in the order of their receipt. The receipt of the appeal will be acknowledged by the CFPB and the requester will be advised of the date the appeal was received, the appeal tracking number, and the expected date of response.

(e) *Determinations to grant or deny administrative appeals.* The General Counsel is authorized to and shall decide whether to affirm the initial determination (in whole or in part) or to reverse the initial determination (in whole or in part) and shall notify the requester of this decision in writing within twenty (20) business days after the date of receipt of the appeal, unless extended pursuant to §1070.16(d) of this subpart.

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be:

- (i) Notified in writing of the denial;
- (ii) Notified of the reasons for the denial, including which of the FOIA exemptions were relied upon;
- (iii) Notified of the name and title or position of the official responsible for the determination on appeal;
- (iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and
- (v) Provided with notification that mediation services are available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3).

(2) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(3) If the initial determination is remanded on appeal to the Chief FOIA

Officer for further action, the requester shall be so notified and the request shall be processed in accordance with the decision on appeal. The remanded request shall be treated as a new request received by the CFPB as of the date when the General Counsel transmits the remand notification to the requester. The procedures and deadlines set forth in this subpart for processing, deciding, responding to, and filing administrative appeals of new FOIA requests shall apply to the remanded request.

(f) *Adjudication of administrative appeals of requests in litigation.* An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

§ 1070.22 Fees for processing requests for CFPB records.

(a) *In general.* The CFPB shall determine whether and to what extent to charge a requester fees for processing a FOIA request, for the services and in the amounts set forth in this paragraph, by determining an appropriate fee category for the requester (as set forth in paragraph (b) of this section) and then by charging the requester those fees applicable to the assigned category (as set forth in paragraph (c) of this section), unless circumstances exist (as described in paragraph (d) of this section) that render fees inapplicable or inadvisable or unless the requester has requested and the CFPB has granted a reduction in or waiver of fees (as set forth in paragraph (e) of this section).

(1) The CFPB shall charge a requester fees for the cost of copying or printing records at the rate of \$0.10 per page.

(2) The CFPB shall charge a requester for all time spent by its employees searching for records that are responsive to a request. The CFPB shall charge the requester fees for search time as follows:

(i) The CFPB shall charge for search time at the salary rate(s) (basic pay plus sixteen (16) percent) of the employee(s) who conduct the search. However, the CFPB shall charge search fees

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at the rate of \$9.00 per fifteen (15) minutes of search time whenever only administrative/clerical employees conduct a search and at the rate of \$23.00 per fifteen (15) minutes of search time whenever only professional/executive employees conduct a search. Search charges shall also include transportation of employees and records necessary to the search at actual cost. Fees may be charged for search time even if the search does not yield any responsive records, or if records are exempt from disclosure.

(ii) The CFPB shall charge the requester for the actual direct costs of conducting an electronic records search, including computer search time, runs, and output. The CFPB shall also charge for time spent by computer operators or programmers (at the rates set forth in paragraph (a)(2)(i) of this section) who conduct or assist in the conduct of an electronic records search.

(3) The CFPB shall charge a requester for time spent by its employees examining responsive records to determine whether any portions of such record are exempt from disclosure, pursuant to the FOIA exemptions of 5 U.S.C. 552(b). The CFPB shall also charge a requester for time spent by its employees redacting any such exempt information from a record and preparing a record for release to the requester. The CFPB shall charge a requester for time spent reviewing records at the salary rate(s) (*i.e.*, basic pay plus sixteen (16) percent) of the employees who conduct the review. However, the CFPB shall charge review fees at the rate of \$9.00 per fifteen (15) minutes of search time whenever only administrative/clerical employees review records and at the rate of \$23.00 per fifteen (15) minutes of search time whenever only professional/executive employees review records. Fees shall be charged for review time even if records ultimately are not disclosed.

(4) Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records.

(5) Other services and materials requested which are not covered by this

part nor required by the FOIA are chargeable at the actual cost to the CFPB. This includes, but is not limited to:

(i) Certifying that records are true copies; or

(ii) Sending records by special methods such as express mail, etc.

(b) *Categories of requesters.* (1) For purposes of assessing fees as set forth in this section, each requester shall be assigned to one of the following categories:

(i) *Commercial user* refers to one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The CFPB may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(iii) *Non-commercial scientific institution* refers to an institution that is not operated on a "commercial user" basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this paragraph, the term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products

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available for purchase by or subscription by or free distribution to the general public. Other examples of news media entities include online publications and Web sites that regularly deliver news content to the public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the CFPB may also consider the past publication record of the requester in making such a determination.

(v) “*Other*” requester refers to a requester who does not fall within any of the previously described categories.

(2) Within twenty (20) calendar days of its receipt of a request, the CFPB shall make a determination as to the proper fee category to apply to a requester. The CFPB shall inform the requester of the determination in the request acknowledgment letter, or if no such letter is required, in writing. The CFPB shall base its determination upon a review of the requester’s submission and the CFPB’s own records. Where the CFPB has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the CFPB should seek additional clarification before assigning the request to a specific category.

(3) If the CFPB assigns to a requester a fee category, then the requester shall have the right to submit an appeal of the CFPB’s determination in accordance with §1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester of an adverse fee category determination. The requester shall label its appeal request “Appeal of Fee Category Determination.”

(c) *Fees applicable to each category of requester.* The following fee schedule

applies uniformly throughout the CFPB to requests processed under the FOIA. Specific levels of fees are prescribed for each category of requester defined in paragraph (b) of this section.

(1) Commercial users shall be charged the full direct costs of searching for, reviewing, and duplicating the records they request. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the CFPB is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The CFPB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records or no records are located.

(2) Educational and non-commercial scientific institution requesters shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide the first one hundred (100) pages of duplication free of charge. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) Representatives of the news media shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide them with the first one hundred (100) pages of duplication free of charge.

(4) Other requesters who do not fit any of the categories described above shall be charged the full direct cost of searching for and duplicating records that are responsive to the request, except that the CFPB shall provide the first one hundred (100) pages of duplication and the first two hours of search time free of charge. The CFPB may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for

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records about themselves filed in the CFPB's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permit fees only for duplication, after the first one hundred (100) pages are furnished free of charge.

(d) *Other circumstances when fees are not charged.* Notwithstanding paragraphs (b) and (c) of this section, the CFPB may not charge a requester a fee for processing a FOIA request if any of the following applies:

(1) The cost of collecting a fee would be equal to or greater than the fee itself;

(2) The fees were waived or reduced in accordance with paragraph (e) of this section;

(3) If the CFPB fails to comply with any time limit under §§ 1070.15 or 1070.21 of this subpart, and no unusual circumstances (as that term is defined in § 1070.16(d)) or exceptional circumstances apply to the processing of the request, then the CFPB shall not assess search fees, or if the requester is a representative of the news media or an educational or noncommercial scientific institution, then the CFPB shall not assess duplication fees. The term "exceptional circumstances" does not include a delay that results from a predictable CFPB workload of requests, unless the CFPB demonstrates reasonable progress in reducing its backlog of pending requests; or

(4) If the CFPB determines, as a matter of administrative discretion, that waiving or reducing the fees would serve the interest of the United States Government.

(e) *Waiver or reduction of fees.* (1) A requester shall be entitled to receive from the CFPB a waiver or reduction in the fees otherwise applicable to a FOIA request whenever the requester:

(i) Requests such waiver or reduction of fees in writing or by electronic means as part of the FOIA request;

(ii) Labels the request for waiver or reduction of fees "Fee Waiver or Reduction Requested" on the FOIA request; and

(iii) Demonstrates that the fee reduction or waiver request that a waiver or reduction of the fees is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(ii)(A), the CFPB shall consider the following factors:

(i) The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, and not remote or attenuated.

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially similar form, is not as likely to contribute to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(ii)(B), the CFPB shall consider the following factors:

(i) The CFPB shall consider any commercial interest of the requester (with reference to the definition of "commercial user" in (b)(1)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an

opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The CFPB ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) The CFPB shall decide whether to grant or deny a request to reduce or waive fees prior to processing a request. The CFPB shall notify the requester of the determination in writing.

(6) If the CFPB denies a request to reduce or waive fees, then the CFPB shall advise the requester, in the denial notification letter, that the requester may incur fees if the CFPB proceeds to process the request. The notification letter shall also advise the requester that the CFPB will not proceed to process the request further unless the requester, in writing, directs the CFPB to do so and either agrees to pay any fees that may apply to processing the request or specifies an upper limit (of not less than \$25) that the requester is willing to pay to process the request. If the CFPB does not receive this written direction and agreement/specification within thirty (30) calendar days of the date of the denial notification letter, then the CFPB shall deem the request to be withdrawn.

(7) If the CFPB denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal of the denial determination in accordance with section 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester denying the fee reduction or waiver request.

The requester should label its appeal request "Appeal for Fee Reduction/Waiver."

(f) *Advance notice and prepayment of fees.* (1) When the CFPB estimates the fees for processing a request to exceed the limit set by the requester, and that amount is less than \$250, or the requester did not specify a limit and the amount is less than \$250, the requester shall be notified of the estimated fees, and provided a breakdown of the fees attributable to search, review, and duplication, respectively. The requester must provide an agreement to pay the estimated fees; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the fees are estimated to exceed \$250, the requester shall be notified of the estimated fees and provided a breakdown of the fees attributable to search, review, and duplication, respectively. The requester must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to lower the applicable fees.

(3) The CFPB reserves the right to request prepayment after a request is processed and before documents are released.

(4) If a requester has previously failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the CFPB begins to process a new request or the pending request.

(5) When the CFPB acts under paragraphs (f)(1) through (4) of this section, the statutory time limits of twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

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(g) *Form of payment.* Payment may be tendered as set forth on the CFPB's Web site, <http://www.consumerfinance.gov>.

(h) *Charging interest.* The CFPB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the CFPB. The CFPB will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* Where the CFPB reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the CFPB may aggregate those requests and charge accordingly. The CFPB may presume that multiple requests of this type made within a thirty (30) day period have been made in order to avoid fees. Where requests are separated by a longer period, the CFPB will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

§ 1070.23 Authority and responsibilities of the Chief FOIA Officer.

(a) *Chief FOIA Officer.* The Director authorizes the Chief FOIA Officer to act upon all requests for agency records, with the exception of determining appeals from the initial determinations of the Chief FOIA Officer, which will be decided by the General Counsel. The Chief FOIA officer shall, subject to the authority of the Director:

(1) Have CFPB-wide responsibility for efficient and appropriate compliance with the FOIA;

(2) Monitor implementation of the FOIA throughout the CFPB and keep the Director, the General Counsel, and the Attorney General appropriately informed of the CFPB's performance in implementing the FOIA;

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(3) Recommend to the Director such adjustments to agency practices, policies, personnel and funding as may be necessary to improve the Chief FOIA Officer's implementation of the FOIA;

(4) Review and report to the Attorney General, through the Director, at such times and in such formats as the Attorney General may direct, on the CFPB's performance in implementing the FOIA;

(5) Facilitate public understanding of the purposes of the statutory exemptions of the FOIA by including concise descriptions of the exemptions in both the CFPB's handbook and the CFPB's annual report on the FOIA, and by providing an overview, where appropriate, of certain general categories of CFPB records to which those exemptions apply;

(6) Designate one or more FOIA Public Liaisons; and

(7) Maintain and update, as necessary and in accordance with the requirements of this subpart, the CFPB's FOIA Web site, including its e-FOIA Library.

(b) *FOIA Public Liaisons.* FOIA Public Liaisons shall report to the Chief FOIA Officer and shall serve as supervisory officials to whom a requester can raise concerns about the service the requester has received from the CFPB's FOIA office, following an initial response from the FOIA office staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

§ 1070.30 Purpose and scope; definitions.

(a) This subpart sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints directed to the CFPB, the Director, or to any CFPB employee in connection with Federal or State litigation arising out of or involving the performance of official activities of the CFPB; and